

***United States Court of Appeals
for the Second Circuit***



APPENDIX

8015
74-1232

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

SPANG INDUSTRIES, INC., FORT PITT BRIDGE DIVISION,
a corporation,

Appellant,

v.

THE AETNA CASUALTY AND SURETY CO.,
a corporation.

TORRINGTON CONSTRUCTION CO., INC.,

v.

SPANG INDUSTRIES, INC., FORT PITT BRIDGE DIVISION,
a corporation,

Appellant,

v.

SYRACUSE RIGGING CO., INC.

APPEAL FROM THE JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK AT NOS. 72-CV-22 AND
72-CV-463 CIVIL ACTIONS.

APPENDIX

WILLIAM T. MARSH,

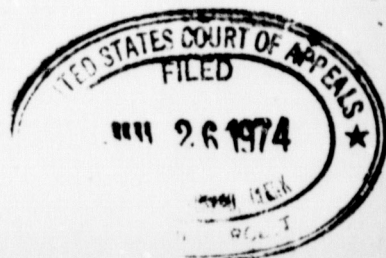
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PAGINATION AS IN ORIGINAL COPY

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In the
United States Court of Appeals

For the Second Circuit

No. 74-1232

SPANG INDUSTRIES, INC., FORT PITT
BRIDGE DIVISION, a corporation,
Appellant,

v.

THE AETNA CASUALTY AND SURETY CO.,
a corporation,

TORRINGTON CONSTRUCTION CO., INC.,

v.

SPANG INDUSTRIES, INC., FORT PITT
BRIDGE DIVISION, a corporation,
Appellant,

v.

SYRACUSE RIGGING CO., INC.

Relevant Docket Entries.

72-CV-22.

7-7-71, Complaint Filed.

7-16-71, Summons returned served on defendant 7-12-71.

7-28-71, Motion to Dismiss or to transfer venue filed.

Relevant Docket Entries—72-CV-22.

12-9-71, Memorandum Order entered directing action is transferred to U. S. Dist. Ct. for N.D.N.Y.

1-13-72, Case Docketed in N.D.N.Y. to No. 72-CV-22.

1-19-72, Answer filed.

5-29-73, Trial commenced non-jury.

5-31-73, Trial concluded.

9-12-73, Findings of Fact and Conclusions Filed.

10-15-73, Judgment entered.

10-25-73, Motions to Amend Judgment and to Amend Findings and for Additional Findings Filed.

12-13-73, Order entered.

12-13-73, Amended Judgment entered.

1-11-74, Notice of Appeal Filed.

1-11-74, Bond for Costs on Appeal Filed.

Relevant Docket Entries.

72-CV-463

10-10-72, Petition for Removal filed.

10-10-72, Bond on Removal filed.

10-26-72, Answer and Counterclaim filed.

10-30-72, Reply to Counterclaim filed.

5-29-73, Trial commenced non-jury.

5-31-73, Trial concluded.

9-12-73, Findings of Fact and Conclusions filed.

Relevant Docket Entries—72-CV-463.

10-15-73, Judgment entered.

10-25-73, Motions to Amend Judgment and to Amend Findings and for Additional Findings filed.

12-13-73, Order entered.

12-13-73, Amended Judgment entered.

1-11-74, Notice of Appeal filed.

Complaint.

**IN THE UNITED STATES DISTRICT COURT
For the Western District of Pennsylvania**

**SPANG INDUSTRIES INC., FORT PITT BRIDGE
DIVISION, a corporation,**

Plaintiff,

v.

**THE AETNA CASUALTY AND SURETY COMPANY, a
corporation,**

Defendant.

**Civil Action No. 71 643.
Jury Trial Demanded.**

1. Plaintiff Spang Industries Inc. is a Pennsylvania corporation with its principal place of business in the County of Butler, Pennsylvania and with the plant facilities of the Fort Pitt Bridge Division in the County of Washington, Pennsylvania.

2. Defendant The Aetna Casualty and Surety Company is a corporation organized and existing under the laws of a state other than Pennsylvania, and having its principal place of business in Hartford, Connecticut.

3. The amount in controversy exceeds, exclusive of interest and costs, the sum of \$10,000.00.

4. Under date of September 9, 1969, defendant's principal the Torrington Construction Co., Inc. entered into a contract with the New York State Department of Transportation by

Complaint—72-CV-22.

which Torrington agreed to supply all the materials and perform all the work necessary to accomplish the construction of a portion of State Highway No. 8479 in the County of Washington in New York, in consideration of the sum of \$2,751,962.70. Said contract is known as FARC 69-104.

5. Under the same date of September 9, 1969, defendant surety for its principal Torrington Construction Co., Inc. issued its "Labor and Material Bond", a true and correct copy of which is attached hereto, marked Exhibit "A" and incorporated herein by reference, whereby the defendant bound himself unto the people of the State of New York to the use of every person interested, in the sum of \$2,751,962.70, to secure the prompt payment of all moneys due to all persons furnishing labor or materials to the contractor in the prosecution of the work provided for in the aforesaid contract FARC 69-104.

6. By written agreement consisting of plaintiff's written quotation dated September 5, 1969, accepted by Torrington under date of October 28, 1969, and Torrington's letter dated October 9, 1969, plaintiff agreed to furnish, fabricate and erect the structural steel, Item 29, required in the performance of the aforesaid contract FARC 69-104 for the price of 27.5 cents per pound less a crane rental charge of \$2,200.00. True and correct copies of the documents constituting this contract are attached hereto, marked Exhibit "B" and incorporated herein by reference.

7. Pursuant to said contract, Exhibit "B", plaintiff has furnished to Torrington all the required materials and labor and has invoiced Torrington for the total sum of \$132,280.23, which amount is subject to adjustment when the New York Department of Transportation establishes the final approved quantities. Said contract, Exhibit "B", provides that

Complaint—72-CV-22.

Torrington was to pay plaintiff within thirty days from date of invoice. Against the invoiced amount, Torrington has paid plaintiff only \$60,000.00, leaving a balance due of \$72,280.23 less any applicable retainage. In addition, Torrington owes plaintiff interest on said principal balance from the dates the constituent elements thereof became due. Torrington has received payment in full from the New York Department of Transportation on Item 29.

8. Plaintiff has made demand for payment on both Torrington and defendant, each of whom has failed, neglected and refused to make payment.

WHEREFORE, plaintiff demands judgment in the amount of \$72,274.73 or such other sum that is in accordance with the final pay weight computations by the New York Department of Transportation, plus interest from the due date of each constituent element of the principal balance due.

WILLIAM T. MARSH,
Attorney for Plaintiff,

Office Address:

Spang Building,
Brugh Avenue,
Butler, Pa. 16001;

Mailing Address:

P. O. Box 751,
Butler, Pa. 16001.

Exhibit A Annexed to Complaint.**LABOR AND MATERIAL BOND.**

Approved as to form by
 Attorney-General
 August 26, 1964

Comptroller's Form
 (Sec. 137.
 State Finance Law)

STATE OF NEW YORK

Know all men by these presents, That Torrington Const. Co. Inc. of P. O. Box 388 of Torrington, Conn. (hereinafter called the "PRINCIPAL") and THE AETNA CASUALTY AND SURETY COMPANY a corporation created and existing under the laws of the State of Connecticut having its principal office in the City of Hartford, (hereinafter called the "SURETY"), are held and firmly bound unto the people of the State of New York, (hereinafter called the "STATE"), in the full and just sum of Two Million Seven Hundred Fifty One Thousand Nine Hundred Sixty Two and 70/100 (\$2,751,962.70) Dollars good and lawful money of the United States of America, for payment of which said sum of money, well and truly to be made and done, the said Principal binds himself, his heirs, executors and administrators, successors and assigns, and the said Surety binds itself, its successors and assigns jointly and severally, firmly by these presents:

Signed, sealed and dated this September 9th 1969 A. D.

WHEREAS, said PRINCIPAL has entered into a certain written contract, bearing date Sept. 9th, 1969 with the New York State Department of Transportation, 1220 Washington Avenue, Albany, New York 12226.

**FOR RECONSTRUCTING WITH FEDERAL AID,
 A PORTION OF THE:
 CAMBRIDGE-AWAQUASSACOOK-VERMONT
 STATE LINE**

Exhibit A Annexed to Complaint.

STATE HIGHWAY NO. 8479
FA PROJECT NO. S-810(3)
A TOTAL LENGTH OF 4.47 MILES
(PLUS 0.3 MILE OF ACCESS)

IN THE COUNTY OF WASHINGTON (Rte. 313)
WHICH CONSTITUTES CONTRACT NO. FARC 69-104

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall promptly pay all moneys due to all persons furnishing labor or materials to him or his subcontractors in the prosecution of the work provided for in said contract, then this obligation shall be void, otherwise to remain in full force and effect;

Provided, however, that the Comptroller of the State of New York having required the said Principal to furnish this bond in order to comply with the provisions of Section 137 of the State Finance Law, all rights and remedies on this bond shall inure solely to such persons and shall be determined in accordance with the provisions, conditions and limitations of said Section to the same extent as if they were copied at length herein; and

Further, provided, that the place of trial of any action on this bond shall be in the county in which the said contract was to be performed, or if said contract was to be performed in more than one county, then in any such county, and not elsewhere.

IN TESTIMONY WHEREOF, the said PRINCIPAL has hereunto set its hand and seal and the said Surety has caused this instrument to be signed by its Attorney-in-fact and its

Exhibit A Annexed to Complaint.

corporate seal to be hereunto affixed, the day and year first above written.

Signed, sealed and delivered in the presence of

(Corporate seal of
Principal if a
corporation)

TORRINGTON CONST.
CO., INC. [L.S.]
By: Theodore Zoli Jr., V. P., [L.S.]
& Tres.
Theodore Zoli, Jr., Vice
President & Treas.

..... [L.S.]
Principal

(Corporate seal of
Surety Co.)

THE AETNA CASUALTY
AND SURETY COMPANY
111 Pearl Street
of Hartford, Connecticut
By (Illegible)
Attorney-in-fact

.....
Surety

(Acknowledgement by principal, unless it be a corporation)

State of New York }
County of } ss.:

On this day of 19..., before me personally
came to me known and known to me to be the person

Exhibit A Annexed to Complaint.

described in and who executed the foregoing instrument and acknowledged that he executed the same.

.....
Notary Public, County.

(Acknowledgement by principal, if a corporation)

State of New York }
 County of Albany } ss.:

On this 9th day of September 1969, before me personally came Theodore Zoli, Jr. to me known, who being by me duly sworn, did depose and say that he resides in Glens Falls, New York; that he is the Vice President & Treas. of the Torrington Const. Co. Inc. the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

(Illegible)
Notary Public, Albany County.
 My commission expires: 3/30/71

(Acknowledgement by Surety Company)

State of New York }
 County of } ss.:

On this day of, before me personally came
, to me known, who being by me duly sworn,

Exhibit A Annexed to Complaint.

did depose and say that he resides in, that he is the of the, the corporation described in and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Fuller & O'Brien, Inc.	Financial Statement and copy of
75 State Street	Resolution of Authority of Surety Co.
Albany, New York	Attached to Original Contract

.....
Notary Public, County.

State of New York,

I hereby approve the foregoing contract and bond as to form and manner of execution.

Dated

.....
Attorney-General

State of New York

I hereby approve the foregoing contract and bond.

Dated

.....
Comptroller.

Exhibit B Annexed to Complaint.

CONTRACT.

FORT PITT BRIDGE WORKS

Subsidiary of Spang & Company
Canonsburg, Pennsylvania 15317
Telephone (412) 281-0654

September 5, 1969

Executive Offices
Butler, Pennsylvania

Torrington Construction Co., Inc.
P. O. Box 561
Glenn Falls, New York 12801

Re: New York State Department of Transportation
Project FARC 69-104
Washington County

Attention: Theodore Zoli, Jr.
Vice President

Gentlemen:

Confirming our verbal quotation of August 27, 1969, we are pleased to quote as follows:

All agreements contingent upon strikes, accidents, mill deliveries and other causes beyond our reasonable control.

~~For furnishing, fabricating and erecting the structural steel, Item No. 29, in accordance with plans and specifications prepared by New York State Department of Transportation, we quote the unit price of 28.1¢ per pound.~~

T.Z.

~~Estimated Weight--Approximately 240 tons~~

For furnishing, fabricating and erecting the structural steel, Item No. 29, in accordance with plans and specifications prepared by New York State Department of Transportation, we quote the unit price of 27.5¢ per pound, based on

Exhibit B Annexed to Complaint.

Torrington Construction Company, Inc. renting to our erector, Syracuse Rigging Co., for the lump sum of \$2,200.00, a crane with sufficient capacity, to carry out this work, the operating personnel for same, and a compressor which will be operated by our erector's men. The crane must be available for unloading at the rail head and also for the erection of steel. The 27.5¢/lb. price does not include the rental for \$2,200.00.

Contract for crane rental and including operating personnel, and compressor, shall be between Torrington Construction Co., Inc. and Syracuse Rigging, Inc.

Our price includes one (1) standard shop coat of paint.

We exclude the following from our bid: Furnishing of shear connectors or erection of same, furnishing or erection of drainage material, maintenance of traffic, cost of flagmen, touch-up or field painting, field inspection and testing, field engineering, and setting or grouting of anchor bolts.

We require an access road be maintained by others from public highways to bridge sites for moving cranes and equipment. Suitable access ramps are to be provided to the river bed for the erection and also for trucking girders for each span. Our erection quotation is based on one (1) move-in.

Terms—Net cash thirty (30) days from the date of invoice.

We cannot be responsible for any deterioration of paint due to lengthy exposure.

Delivery to be mutually agreed upon.

Our erection quotation is based on a forty (40) hour work week five (5) eight (8) hour days, Monday through Friday. If at the Torrington Const. Co.'s request ~~for any reason~~ it becomes necessary to work additional hours,

Exhibit B Annexed to Complaint.

cost of premium time, plus insurance and Social Security benefits to be for your account.

In all particulars not specifically covered herein, all materials shall be furnished, delivered and erected in accordance with the current edition of the Code of Standard Practice of American Institute of Steel Construction.

We have made no provision in this quotation for any tax imposed by any present or future law, Federal, State, Municipal or any other Governmental agency (with the exception of the present 3% New York State and Washington County Sales Tax which we, as consumers, have included) on the sale of materials covered hereunder, and if applicable to this proposition such tax or taxes must be added to price herein quoted.

This quotation subject to review if not accepted within thirty (30) days. All contracts subject to Credit Department approval.

Yours very truly,
FORT PITT BRIDGE WORKS
Michael J. Alterio
Michael J. Alterio
Sales Engineer

ACCEPTED BY:
TORRINGTON CONSTRUCTION
CO., INC.,
(Firm Name)
By Theodore Zoli, Jr.,
Date: 10/28/69

MJA/sjb
cc: (1)
Contract:
C-1377
cc: DMB-JBH-JBN-JAB-WLS-FAB

Exhibit B Annexed to Complaint.

P.O. Box 269
Glens Falls, New York 12801

October 9, 1969

Fort Pitt Bridge Works
Canonsburg, Pennsylvania 15317

Re: Project No. FARC 69-104
Washington County

Dear Sir:

Enclosed is a signed copy of the contract for the above referenced project. In addition to the provisions of your contract, the contract must include the following:

That employment of labor by Subcontractor shall be effected under conditions which are satisfactory to Contractor. Subcontractor shall remove or cause to have removed from the project any employee or employees who are considered unsatisfactory by the Contractor. It is understood that Contractor has entered into Labor Agreements with labor unions, and Subcontractor hereby agrees to comply with each and all of the terms and conditions of such agreement or agreements applicable to the work herein undertaken. Subcontractor shall require his Subcontractors to agree in writing to comply with any of such agreements as may be applicable to his work on the job site.

Subcontractor warrants and agrees that with respect to any of the work covered by this Agreement which is to be performed at the site of construction his employees performing such work are and shall be subject to and covered by an appropriate current labor agreement, or one which Contractor may become a party to with the ap-

Exhibit B Annexed to Complaint.

propriate union, or subordinate body, affiliated with the Building and Construction Trades Department, AFL-CIO, or with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or an affiliate thereof. Subcontractor promises to require any of his Subcontractors on the job site to make as to him a warranty and agreement in writing identical to the foregoing.

That the "Required Contract Provisions Federal Aid Contracts Primary Highways" is a permanent part of this contract, and is attached hereto.

Very truly yours,

**TORRINGTON CONSTRUCTION
CO., INC.,
Theodore Zoli, V.P.,
Theodore Zoli,
Vice President.**

TZ:mp

Accepted: 13 day of Oct., 1969
FORT PITT BRIDGE WORKS

By:

**J. G. Conley
Vice President and General Manager.**

Exhibit B Annexed to Complaint.

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONTRACTS
PRIMARY HIGHWAYS (exclusive of Interstate)**

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I. APPLICATION

1. These contract provisions shall apply to all work performed on the contract by the contractor with his own organization and with the assistance of workmen under his immediate superintendence and to all work performed on the contract by piecework, station work or by subcontract.

2. The contractor shall insert in each of his subcontracts all of the stipulations contained in these Required Contract Provisions and also a clause requiring his subcontractors to include these Required Contract Provisions in any lower tier subcontracts which they may enter into, together with a clause requiring the inclusion of these provisions in any further subcontracts that may in turn be made. The Required Contract Provisions shall in no instance be incorporated by reference.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be grounds for termination of the contract.

*Exhibit B Annexed to Complaint.***II. EQUAL OPPORTUNITY****1. Selection of Labor:**

During the performance of this contract, the contractor shall not discriminate against labor from any other State, possession or territory of the United States.

2. Employment Practices:

During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department ad-

Exhibit B Annexed to Complaint.

vising the labor union or workers' representatives of the contractor's commitments under this section II-2 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Bureau of Public Roads and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of this Section II-2 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No.

Exhibit B Annexed to Complaint.

11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Bureau of Public Roads may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the bureau, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. Selection of Subcontractors, Procurement of Materials, and Leasing of Equipment:

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

a. *Compliance with Regulations:* The contractor will comply with the Regulations of the Department of Commerce relative to nondiscrimination in Federally-assisted programs of the Department of Commerce (Title 15, Code of Federal Regulations, Part 8, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

b. *Nondiscrimination:* The contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by Section 8.4 of the Regulations, including employment practices when the contract covers a program set forth in Appendix A-II of the Regulations.

Exhibit B Annexed to Complaint.

c. *Solicitations:* In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color or national origin.

d. *Information and Reports:* The contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State highway department or the Bureau of Public Roads to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway department, or the Bureau of Public Roads as appropriate, and shall set forth what efforts it has made to obtain the information.

e. *Sanctions for noncompliance.* In the event of the contractor's noncompliance with the nondiscrimination provisions of this Section II-3, the State highway department shall impose such contract sanctions as it or the Bureau of Public Roads may determine to be appropriate, including, but not limited to,

- (1) withholding of payments to the contractor under the contract until the contractor complies, and/or

- (2) cancellation, termination or suspension of the contract, in whole or in part.

Exhibit B Annexed to Complaint.

f. *Incorporation of Provisions:* The contractor will include the provisions of Section II-3 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract, procurement, or lease as the State highway department or the Bureau of Public Roads may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor, supplier, or lessor as a result of such direction, the contractor may request the State to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

III. PAYMENT OF PREDETERMINED MINIMUM WAGES

These contract provisions are supplemented elsewhere in the contract by special provisions which set forth certain predetermined minimum wages rates. The contractor shall pay not less than those rates.

IV. STATEMENTS AND PAYROLLS

1. *Final Labor Summary:*

The contractor and each subcontractor shall furnish, upon the completion of the contract, a summary of all employment, indicating for the completed project the total hours worked and the total amount earned. This data shall be submitted to the State highway department resident engineer on Form PR-47* together with the data required in Section V, hereof, relative to materials and supplies.

*Not required for projects financed solely with Highway Beautification Act of 1965 Funds.

Exhibit B Annexed to Complaint.

2. The submission by the contractor of payrolls, or copies thereof, is not required. However, each contractor and subcontractor shall preserve his weekly payroll records for a period of three years from the date of completion of this contract.

3. The payroll records shall contain the name, address and social security number of each employee, his correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid.

4. The contractor will make his payroll records available at the project site for inspection by the State highway department contracting officer or his authorized representative, and will permit such contracting officer or representative to interview employees during working hours on the job.

5. The wages of labor shall be paid in legal tender of the United States, except that this condition will be considered satisfied if payment is made by a negotiable check, on a solvent bank, which may be cashed readily by the employee in the local community for the full amount, without discount or collection charges of any kind. Where checks are used for payments, the contractor shall make all necessary arrangements for them to be cashed and shall give information regarding such arrangements.

6. No fee of any kind shall be asked or accepted by the contractor or any of his agents from any person as a condition of employment on the project.

7. No laborers shall be charged for any tools used in performing their respective duties except for reasonably avoidable loss or damage thereto.

8. Every employee on the work covered by this contract shall be permitted to lodge, board and trade where and with

Exhibit B Annexed to Complaint.

whom he elects and neither the contractor nor his agents, nor his employees shall directly or indirectly require as a condition of employment that an employee shall lodge, board or trade at a particular place or with a particular person.

9. No charge shall be made for any transportation furnished by the contractor or his agents to any person employed on the work.

10. No individual shall be employed as a laborer or mechanic on this contract except on a wage basis, but this shall not be construed to prohibit the rental of teams, trucks, or other equipment from individuals.

V. RECORD OF MATERIALS, SUPPLIES AND LABOR

1. The contractor shall maintain a record of the total costs of all materials and supplies purchased for the incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form PR-47* and in the units shown. Upon completion of the contract, this record, together with the final labor summary required in Section IV, paragraph 1, hereof, shall be transmitted to the State highway department resident engineer for the project on Form PR-47* in accordance with instructions attached thereto, which will be furnished for this purpose upon request. The quantities for the listed items shall be reported separately for roadway and for structures over 20 feet long as measured along the centerline of the roadway.

2. The contractor shall become familiar with the list of specific materials and supplies contained in Form PR-47* prior to the commencement of work under this contract. Any additional materials information required will be solicited

*Not required for projects financed solely with Highway Beautification Act of 1965 Funds.

Exhibit B Annexed to Complaint.

through revisions of Form PR-47* with attendant explanations.

3. Where subcontractors are involved the contractor shall submit either a single report covering work both by himself and all his subcontractors, or he may submit separate reports for himself and for each of his subcontractors.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with his own organization contract work amounting to not less than 50 percent of the original total contract price, except that any items designated by the State as "Speciality Items" may be performed by subcontract and the amount of any such "Specialty Items" so performed may be deducted from the original total contract price before computing the amount of work required to be performed by the contractor with his own organization.

a. "His own organization" shall be construed to include only workmen employed and paid directly by the contractor and equipment owned or rented by him, with or without operators.

b. "Specialty Items" shall be construed to be limited to work that requires specialized knowledge, craftsmanship or equipment not ordinarily available on contracting organizations qualified to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. In addition to the 50 percent requirement set forth in paragraph 1 above, the contractor shall furnish (a) a competent superintendent or foreman or is employed by him, who has full authority to direct performance of the work in accordance with the contract requirements, and who is in charge of all construction operations (regardless of who

Exhibit B Annexed to Complaint.

performs the work), and (b) such other of his own organizational capability and responsibility (supervision, management, and engineering services) as the State highway department contracting officer determines is necessary to assure the performance of the contract.

3. The contract amount upon which the 50 percent requirement set forth in paragraph 1 is computed includes the cost of materials and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

4. Any items that have been selected as "Specialty Items" for the contract are listed as such in the Special Provisions, bid schedule, or elsewhere in the contract documents.

5. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the State highway department contracting officer, or his authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Requests for permission to sublet, assign or otherwise dispose of any portion of the contract shall be in writing and accompanied by (a) a showing that the organization which will perform the work is particularly experienced and equipped for such work, and (b) an assurance by the contractor that the labor standards provisions set forth in this contract shall apply to labor performed on all work encompassed by the request.

VII. SAFETY; ACCIDENT PREVENTION

In the performance of this contract, the contractor shall comply with all applicable Federal, State and local laws governing safety, health and sanitation. The contractor shall provide all safeguards, safety devices and protective equip-

Exhibit B Annexed to Complaint.

ment and take any other needed actions, on his own responsibility, or as the State highway department contracting officer may determine, reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the projects perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project or one or more places where it is readily available to all personnel concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

Title 18, United States Code, Section 1020, reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or to the quantity or quality

Exhibit B Annexed to Complaint.

of the work performed or to be performed, or the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

"Whoever knowingly makes any false statement, false representation, false report, or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

"Whoever knowingly makes any false statement or false representation as to a material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-Aid Road Act approved July 1, 1916 (39 Stat. 355), as amended and supplemented.

"Shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

Memorandum Order.

**IN THE UNITED STATES DISTRICT COURT
For the Western District of Pennsylvania**

**SPANG INDUSTRIES, INC., FORT PITT
BRIDGE DIVISION, a corporation,** *Plaintiff,*

vs.

**THE AETNA CASUALTY AND SURETY CO.,
a corporation,** *Defendant.*

Civil Action No. 71-643.

This action was brought on a "Labor and Material Bond" issued by the defendant, which specifically provides for venue to be laid in the county or counties in which the construction was performed, which in this case is Washington County, New York, which lies in the United States Judicial District for the Northern District of New York.

Defendant has moved to dismiss or, in the alternative, to transfer.

Having held a hearing on the above motion, considering the arguments of both counsel, and reviewing the applicable case law, this court is convinced that the plaintiff is a third-party beneficiary to the bond and is bound by the venue provision contained therein, as noted in our Opinion.

Answer—72-CV-22.

Therefore, under the provisions of 28 U.S.C. 1406(a) the above-entitled action is TRANSFERRED to the United States District Court for the Northern District of New York.

SO ORDERED this 9th day of December, 1971.

GERALD J. WEBER,
United States District Judge.

cc: William T. Marsh, Esq.,
P. O. Box 751,
Butler, Pa. 16001

Robert S. Garrett, Esq.,
Egler, McGregor & Reinstadtler, Esqs.,
2100 Lawyers Building, Pittsburgh, Pa. 15219.

Answer.

UNITED STATES DISTRICT COURT
Northern District of New York

SPANG INDUSTRIES, INC., FORT PITT
BRIDGE DIVISION, a corporation,

Plaintiff,

against

THE AETNA CASUALTY AND SURETY CO.,
a corporation,

Defendant.

Civil No. 71-643.

The defendant, answering the complaint in the above-entitled action, by its attorneys, McClung, Peters and Simon, upon information and belief alleges:

Answer—72-CV-22.

1. Defendant has no knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs "1," "3," "6," "7" and "8" of the complaint, and therefore denies the same.

2. Said action has been transferred to the United States District Court for the Northern District of New York by order of the United States District Court for the Western District of Pennsylvania, dated December 9, 1971.

WHEREFORE defendant demands judgment dismissing the complaint of the plaintiff herein, together with the costs and disbursements of this action.

Dated: Albany, New York
January 18, 1972.

McCLUNG, PETERS and SIMON,
By Homer E. Peters,
Attorneys for Defendant,
State Bank Building,
Albany, New York 12207.

Complaint.

STATE OF NEW YORK

SUPREME COURT—County of Washington

TORRINGTON CONSTRUCTION CO., INC.,
Plaintiff,

against

**SPANG INDUSTRIES, INC., FORT PITT
BRIDGE DIVISION,**
Defendant.

Plaintiff, by its attorneys, McClung, Peters and Simon, for a complaint and cause of action against the defendant, alleges upon information and belief:

1. Plaintiff is a corporation organized and existing under the laws of the State of Connecticut and is duly authorized to transact business in the State of New York, having an office and place of business in the City of Glens Falls, County of Warren, State of New York.

Complaint—72-CV-463.

2. The defendant is a Pennsylvania corporation with its principal place of business in the County of Butler, Pennsylvania, and said Fort Pitt Bridge Division is a part of said corporation and said corporation does not have a place of business in the State of New York, nor is it authorized to transact business in the State of New York.

3. Heretofore and on or about September 9, 1969 the plaintiff entered into a contract with the State of New York, acting by and through its Department of Transportation for reconstruction, with Federal aid, of a portion of New York State Highway Route 313 in the Towns of Jackson and Salem, County of Washington, State of New York, including the construction of a bridge spanning the Battenkill River, said contract being designated FARC 69-104, and said State Highway being designated as No. 8479.

4. Said contract work was to be performed under and pursuant to the Standard Department of Transportation Specifications adopted January 2, 1962, including Addenda A. 1-45, as adopted August 28, 1969, and was unit price in form, including, among other units, a unit designated as Item 29, which included the furnishing and erecting of structural steel for the aforesaid bridge.

5. On or about September 5, 1969 defendant entered into a contract in writing with the plaintiff, (a true copy of which is annexed hereto and marked Exhibit 1) which provided, among other things, for the furnishing, fabricating and erecting of the structural steel under the aforesaid Item 29, and following the execution of said contract by the respective parties to this action, said defendant duly requested plaintiff to inform it of its delivery and erection requirements for said structural steel, as evidenced by its letter of October 13, 1969, annexed hereto and marked Exhibit 2, to which plaintiff

Complaint—72-CV-463.

replied by its letter dated November 3, 1969, annexed hereto and marked Exhibit 3, stating that the plaintiff's requirements for delivery and erection of said structural steel would be late June, 1970.

6. Thereafter by its letter of November 12, 1969, defendant informed plaintiff that it was tentatively scheduling delivery in accordance with plaintiff's requirements and said letter is annexed hereto and marked Exhibit 4.

7. Following said letter of November 12, 1969, defendant on January 7, 1970 wrote another letter to plaintiff, attached hereto and marked Exhibit 5, requesting plaintiff to advise if the date of late June, 1970 was still valid; to which plaintiff duly replied by letter dated January 13, 1970, attached hereto and marked Exhibit 6, that said date was still valid.

8. Following said exchange of correspondence and by letter dated January 29, 1970, annexed hereto and marked Exhibit 7, defendant informed plaintiff that it could not meet the June delivery date, but would inform plaintiff as to anticipated delivery as promptly as possible, to which plaintiff replied by letter dated February 2, 1970, attached hereto as Exhibit 8, requesting that defendant duly inform plaintiff as to its estimated date when the material would be delivered and erected.

9. Following said letter defendant, by letters dated February 6 and 10, 1970, continued to assure plaintiff that it would advise as promptly as possible anticipated delivery and erection dates; defendant failed to so inform plaintiff, and plaintiff on May 12, 1970, as evidenced by letter dated said date, to defendant, attached hereto and marked Exhibit 9, communicated with defendant protesting the failure of defendant to confirm a delivery and erection date for said structural steel.

Complaint—72-CV-463.

10. By letter dated May 20, 1970 defendant informed plaintiff, as evidenced by said letter attached hereto and marked Exhibit 10, that said structural steel would be shipped early in August, 1970.

11. Thereafter said steel was delivered to the contract site by defendant on or about September 16, 1970, but the defendant failed to furnish or provide a crew or equipment for erecting said structural steel, and on or about September 25, 1970, as evidenced by Exhibit 11 attached hereto, plaintiff duly protested in writing to defendant of said delay and interference in its work.

12. The completion of the erection of said structural steel by defendant occurred on October 6, 1970, and the associated and related work was completed by defendant in erecting said steel on October 8, 1970.

13. By reason of the matters alleged as aforesaid, the defendant wrongfully delayed, interfered with and impeded plaintiff in performing and completing its contract work with the State of New York and defendant breached its aforesaid contract with the plaintiff, subjecting the plaintiff to loss and damage, including overhead at the rate of ten per cent and profit at the rate of ten per cent, in the sum of \$23,290.81.

14. No part of said sum of \$23,290.81 has been paid, although payment thereof has been duly demanded.

15. Plaintiff has duly performed each and every part of said contract on its part to be performed.

16. Jurisdiction of this court arises under and by reason of the provisions of Section 302 of the C.P.L.R.

WHEREFORE, plaintiff demands judgment in the sum of Twenty-Three Thousand, Two Hundred Ninety Dollars and

Complaint—72-CV-463.

Eighty-One Cents (\$23,290.81), together with interest and the costs of this action, and together with such other and further relief as to the Court may seem just and proper.

McCLUNG, PETERS AND SIMON,
Attorneys for Plaintiff,
75 State Street,
Albany, N. Y. 12207.

Exhibit 1 Annexed to Complaint.

FORT PITT BRIDGE WORKS

SUBSIDIARY OF SPANG & COMPANY)
 CANONSBURG, PENNSYLVANIA 15317
 TELEPHONE (412) 201-0654

EXECUTIVE OFFICES
 BUTLER, PENNSYLVANIA

September 5, 1969

Torrington Construction Co., Inc.
 P. O. Box 561
 Glens Falls, New York 12801

Re: New York State Department of Transportation
 Project FARC 69-104
 Washington County

Attention: Theodore Zoli, Jr.
 Vice President

Gentlemen:

TED:

PLEASE

K-OUT

THE ONE

WHICH WILL

NOT APPLY,

ON THE ORIGINAL QUOTE ENCLOSED.

Confirming our verbal quotation of August 27, 1969, we are pleased to quote as follows:

All agreements contingent upon strikes, accidents, mill deliveries and other causes beyond our reasonable control.

For furnishing, fabricating and erecting the structural steel, Item #29, in accordance with plans and specifications prepared by New York State Department of Transportation, we quote the unit price of 28.1¢ per pound.

Estimated Weight - Approximately 240 tons

For furnishing, fabricating and erecting the structural steel, Item #29, in accordance with plans and specifications prepared by New York State Department of Transportation, we quote the unit price of 27.5¢ per pound, based on Torrington Construction Company, Inc. renting to our erector, Syracuse Rigging Co., for the lump sum of \$2,200.00, a crane with sufficient capacity, to carry out this work, the operating personnel for same, and a compressor which will be operated by our erector's men. The crane must be available for unloading at the rail head and also for the erection of steel. The 27.5¢/lb. price does not include the rental for \$2,200.00.

Contract for crane rental and including operating personnel, and compressor, shall be between Torrington Construction Co., Inc. and Syracuse Rigging, Inc.

Our price includes one (1) standard shop coat of paint

NOTE: WILL YOU PLEASE RETURN THE COPY OF THE ORIGINAL QUOTE ENCLOSED & MARK YOUR FILE COPY TO SUIT.
 THIS ~~QUOTE~~ COPY MAY BE DISCARDED.

EXHIBIT 1

September 5, 1969

Re: New York State Department of Transportation
Project FARC 69-104
Washington County
Attention: Theodore Zoli, Jr.

We exclude the following from our bid: Furnishing of shear connectors or erection of same, furnishing or erection of drainage material, maintenance of traffic, cost of flagmen, touch-up or field painting, field inspection and testing, field engineering, and setting or grouting of anchor bolts.

We require an access road be maintained by others from public highways to bridge sites for moving cranes and equipment. Suitable access ramps are to be provided to the river bed for the erection and also for trucking of girders for each span. Our erection quotation is based on one (1) move-in.

Terms - Net cash thirty (30) days from date of invoice.

We cannot be responsible for any deterioration of paint due to lengthy exposure.

Delivery to be mutually agreed upon.

TO REMAIN PART OF
THE CONTRACT

Our erection quotation is based on a forty (40) hour work week, five (5) eight (8) hour days, Monday through Friday. If for any reason it becomes necessary to work additional hours, cost of premium time, plus insurance and Social Security benefits to be for your account. E

In all particulars not specifically covered herein, all materials shall be furnished, delivered and erected in accordance with the current edition of the Code of Standard Practice of American Institute of Steel Construction.

We have made no provision in this quotation for any tax imposed by any present or future law, Federal, State, Municipal or any other Governmental agency (with the exception of the present 3% New York State and Washington County Sales Tax which we, as consumers, have included) on the sale of materials covered hereunder, and if applicable to this proposition such tax or taxes must be added to price herein quoted.

This quotation subject to review if not accepted within thirty (30) days.
All contracts subject to Credit Department approval.

Yours very truly,
FORT PITT BRIDGE WORKS
Michael J. Altiero
Michael J. Altiero
Sales Engineer

ACCEPTED BY:

W. J. P. ...
(Firm Name)

By

Date

MJA/sjb
cc: (1)

Exhibit 2 Annexed to Complaint.
LETTER DATED OCTOBER 13, 1969.

FORT PITT BRIDGE WORKS
Subsidiary of Spang & Company
Canonsburg, Pennsylvania 15317
Telephone (412) 281-0854

Executive Offices
Butler, Pennsylvania

October 13, 1969

Torrington Construction Company, Inc.
P. O. Box 561
Glens Falls, New York 12801

Re: New York State Department of Transportation
Project FARC 69-104
Washington County

Attention: Theodore Zoli, Jr.
Vice President

Gentlemen:

We acknowledge your acceptance of our proposal dated September 5, 1969. However, we are re-submitting for your signature, a copy of the original quote so that you may indicate which unit price you prefer.

Please note that we have assigned our contract C-1377 to this order.

We are enclosing one (1) copy of the additional conditions per your letter of October 9, 1969.

Will you please advise your projected requirement for the structural steel and erection? Please advise at your earliest convenience as we will want to schedule shipment in accordance with your request.

Exhibit 2 Annexed to Complaint.

Thank you for this order, and we assure you this work will receive our very close attention.

Yours very truly,

FORT PITT BRIDGE WORKS

Michael J. Alterio

Michael J. Alterio

Sales Engineer

MJA/sjb

Enclosures

Exhibit 3 Annexed to Complaint.

LETTER DATED NOVEMBER 3, 1969

PO Box 269
Glens Falls, New York 12801
November 3, 1969

Fort Pitt Bridge Works
Cannonsburg
Pennsylvania 15317

ATTN: Mr. Michael J. Alterio, Sales Engineer

Gentlemen:

This is in reference to your correspondence of October 13, 1969, concerning contract C-1377.

Please be advised that our requirements for the structural steel and erection will be late June 1970. Please advise us at your earliest convenience if this date will be met.

Thank you for your consideration of the above.

Very truly yours,
TORRINGTON CONSTRUCTION CO., INC.
Theodore Zoli, Jr.
Vice-President

TZ/pc

Exhibit 4 Annexed to Complaint.

LETTER DATED NOVEMBER 12, 1969

FORT PITT BRIDGE WORKS

Subsidiary of Spang & Company

Post Office Box 151

Canonsburg, Pennsylvania

Zip Code 15317

Telephone

Canonsburg 745-3000

Pittsburgh 281-0654

November 12, 1969

Torrington Construction Company, Inc.

P. O. Box 269

Glens Falls, New York 12801

Attention: Theodore Zoli, Jr.

Vice President

Re: New York State Department of Transportation

FARC 69-104

Washington County

Fort Pitt Contract: C-1377

Gentlemen:

We acknowledge receipt of your letter dated November 3, 1969 in which you request structural steel for late June, 1970.

We are tentatively scheduling this work per your requirements and would appreciate your keeping us advised as your work progresses.

Exhibit 4 Annexed to Complaint.

Also, may we have our original quote, resubmitted for your signature and choice of price on October 13, 1969, so that we may complete our files?

Thank you for your cooperation.

Yours very truly,

FORT PITT BRIDGE WORKS

Michael J. Alterio

Michael J. Alterio

Sales Engineer

MJA/sjb

Exhibit 5 Annexed to Complaint.

LETTER DATED JANUARY 7, 1970

FORT PITT BRIDGE WORKS

Subsidiary of Spang & Company

Canonsburg, Pennsylvania 15317

Telephone (412) 281-0854

**Executive Offices
Butler, Pennsylvania**

January 7, 1970

Torrington Construction Company, Inc.

P. O. Box 269

Glens Falls, New York 12801

Re: New York State Department of Transportation

Project FARC 69-104

Washington County

Fort Pitt Contract: C-1377

Attention: Theodore Zoli, Jr.

Vice President

Gentlemen:

Per your letter dated November 3, 1969, you advise that structural steel and erection will be late June, 1970.

Please advise at your earliest convenience if this date is still valid.

Thank you for your cooperation.

Yours very truly,

FORT PITT BRIDGE WORKS

Michael J. Alterio

Michael J. Alterio

Sales Engineer

MJA/sjb

Exhibit 6 Annexed to Complaint.
LETTER DATED JANUARY 13, 1970

P.O. Box 269
Glens Falls, New York 12801
January 13, 1970

Fort Pitt Bridge Works
Canonsburg, Pennsylvania 15317

Re: FARC 69-104
Washington County

Attention: Mr. Michael J. Alterio

Dear Sir:

This is in reference to your letter of January 7, 1970 requesting the date for structural steel erection.

If anything should occur that would change the planned date of June 1970, I will keep you informed.

TORRINGTON CONSTRUCTION CO., INC.

Albert De Lima
General Superintendent

AD:mp

Exhibit 7 Annexed to Complaint.
LETTER DATED JANUARY 29, 1970.

FORT PITT BRIDGE WORKS
Subsidiary of Spang & Company
Canonsburg, Pennsylvania 15317
Telephone (412) 281-0654

Executive Offices
Butler, Pennsylvania

January 29, 1970

Torrington Construction Company, Inc.
P. O. Box 269
Glens Falls, New York 12801

Re: New York State Department of Transportation
Project FARC 69-104
Washington County
Fort Pitt Contract: C-1377

Attention: Albert DeLima
General Superintendent

Gentlemen:

We acknowledge receipt of your letter dated January 13, 1970 in which you have again confirmed a planned steel required date of June, 1970.

Be advised that we are in the midst of an extensive expansion program. Due to unforeseen delays caused by weather, deliveries from suppliers, etc., it is our opinion that the June date cannot be met.

We will advise you as to anticipated delivery as promptly as possible and ask your indulgence in bearing with us through this transition.

Exhibit 7 Annexed to Complaint.

Likewise, will you keep us informed as to any slow-downs due to weather or other reasons, or possible work stoppages resulting from the termination of labor contracts?

Yours very truly,

FORT PITT BRIDGE WORKS
MICHAEL J. ALTERIO
Michael J. Alterio
Sales Engineer

MJA/sjb

Exhibit 8 Annexed to Complaint.
LETTER DATED FEBRUARY 2, 1970.

(SEAL)

TORRINGTON CONSTRUCTION CO., INC.
Post Office Box 388 116 East Main Street
Torrington, Connecticut 06790

Torrington, Connecticut (Area Code 203) 489-3721
Winsted, Connecticut (Area Code 203) 379-5501
Glens Falls, New York (Area Code 518) 703-9000
Kegeville, New York (Area Code 518) 834-7811

P. O. Box 269
Glens Falls, New York 12801

February 2, 1970

Fort Pitt Bridge Works
Canonsburg, Pennsylvania 15317

Re: FARC 69-104
Washington County

Attention: Mr. Michael Alterio

Dear Sir:

Thank you for informing us of your delay in the steel fabrication for our Washington County job.

Would you please give us an estimated date when you would have this material ready so that we could schedule our work.

Very truly yours,

**TORRINGTON CONSTRUCTION
CO., INC.**

Albert De Lima
General Superintendent

AD:mp

Exhibit 9 Annexed to Complaint.

LETTER DATED MAY 12, 1970.

P. O. Box 269
Glens Falls, New York 12801
May 12, 1970

Fort Pitt Bridge Works
Cannonsburg,
Pennsylvania 15317

Re: FARC 69-104
Fort Pitt Contract C-1377

Attention: Mr. Michael J. Alterio
Sales Engineer

Gentlemen:

This is in reference to your correspondence to November 12, 1969, January 7th, January 29th, February 26th and April 10, 1970 concerning delivery of Item 29, Structural Steel, for the subject project.

In your correspondence of November 12, 1969 you advised us that our work is tentatively scheduled by your firm for June delivery as per our request. On January 29th, five months after our acceptance of your proposal, you advise us that the delivery date cannot be met. In our correspondence of November 3, 1969 we requested a confirmed delivery date and in every letter from Fort Pitt since January 29th we have received nothing but a promise that a delivery date is soon to be provided.

As of this date, nine months from our acceptance of your proposal, you have yet to assign a delivery date to this project and provide us with a written confirmation. Your firm has not made the slightest effort at satisfying our original delivery

Exhibit 9 Annexed to Complaint.

requirements which have remained unchanged since our original commitment, despite our many verbal conversations in the past two months, requesting this information. Our attempt at financial persuasion was near ludicrous. Our point in telling you that we would pay you for the structural steel on a previous contract when, and only when, you provided us with a confirmed delivery date, was simply an attempt to get your firm to do something which we requested you to do in our original letter concerning this job. The position taken by your company in this matter was not to our way of thinking justifiable.

Our position is basically this. Confirm within ten days of this letter the delivery date in writing for material to be furnished our company in accordance with our contract and in reasonably close proximity of our original request for the delivery of the steel or our contract is cancelled. In that event we will assume no financial responsibility for any work already performed by Fort Pitt and reserve the right to institute recovery monetarily for any delays caused by the reprocessing of our order with another firm.

Very truly yours,

TORRINGTON CONSTRUCTION
CO., INC.

Theodore Zoli, Jr.
Vice President

TZ:mp

Exhibit 10 Annexed to Complaint.

LETTER DATED MAY 20, 1970.

**FORT PITT BRIDGE WORKS
Subsidiary of Magnetics, Inc.
Canonsburg, Pennsylvania 15317
Telephone (412) 281-0654**

**Executive Offices
Box 751
Butler, Pennsylvania**

May 20, 1970

**Torrington Construction Co., Inc.
P. O. Box 269
Glens Falls, New York 12801**

**Re: New York State Department of Transportation
Project FARC 69-104
Washington County
Fort Pitt Bridge Contract: C-1377**

**Attention: Theodore Zoli, Jr.
Vice President**

Gentlemen:

We acknowledge receipt of your letter dated May 12, 1970.

**Confirming our phone conversation of May 19, 1970 with
your Mr. Albert DeLima, we have established a ship date of
early August, 1970.**

**Be advised that all detail drawings have been submitted for
approval and any assistance by your firm in expediting
drawings would be appreciated.**

**We have placed the order for the back wall bolts, based on
our understanding that an approved sketch was mailed to us**

Exhibit 11 Annexed to Complaint.

on May 18, 1970 per your Mr. Albert DeLima. The very best delivery on these bolts is 2-1/2 to 3 weeks.

Yours very truly,

FORT PITT BRIDGE
DIVISION OF SPANG INDUSTRIES, INC.
MICHAEL J. ALTERIO
Michael J. Alterio
Sales Engineer

MJA/b

cc: Albert DeLima

Exhibit 11 Annexed to Complaint.

LETTER DATED SEPTEMBER 25, 1970.

P. O. Box 269
Glens Falls, New York 12801
September 25, 1970

Fort Pitt Bridge Works
P. O. Box 151
Canonsburg, Pa. 25317

Re: FARC 69-104

Attention: Mr. Michael Alterio
Sales Engineer

Gentlemen:

This is in reference to Item 29, Structural Steel, on subject contract and more particularly to the recent erection efforts

Exhibit 11 Annexed to Complaint.

by Syracuse Rigging Co., your sub-contractor, for the erection of the aforementioned steel.

Please be advised that besides the numerous delays caused by untimely fabrication and shipment of the structural steel on this job, that Syracuse Rigging Co., is not making satisfactory progress in the erection of the steel. Nor are they in any way, helping to facilitate the unbelievably tight schedule we are faced with on this bridge to complete it, the only work jeopardizing the completion of this job this year.

On Friday September 18th I had a conversation with a Mr. William Crouse of Syracuse Rigging Co., which was in accordance with our discussions with Fort Pitt, advising him that we wanted a bay of the bridge set, torqued up, and approved, ready for the erection of the stay-in-place bridge forms, so that our work could be done simultaneously with the erection to complete the bridge earlier. Mr. Craus advised us that he did not have the manpower available, as his representative had advised our superintendent, because they were busy setting the subsequent bay. I advised Mr. Craus that I didn't think it would be impossible to obtain additional help so that torqueing could be accomplished while the remaining workmen were setting the steel in the other bay. Mr. Craus disagreed with me but ultimately condescended to try to provide additional workmen for Monday morning so the torqueing could begin.

Checking with our superintendent on the project on Monday, Mr. Craus did provide one man for Monday to begin torqueing the bridge, however, the torqueing effort was stopped after Monday. As of this date the bridge has not been torqued nor approved and no effort has been made to see that this work on the first bay site commences smoothly. Furthermore it appears that an additional error was made in the

Exhibit 11 Annexed to Complaint.

fabrication of the structural steel, however, this is not delaying the stay-in-place erection at this time.

We feel Syracuse Rigging Co. has been completely uncooperative in progressing this bridge in a way which is needed, considering the late date of the shipment of the structural steel. Furthermore our agreement on crane rental was based on a timely and reasonable effort being made in the erection of the structural steel. The crane rental period provided us, and on which our quote was based, has been exceeded by over 300%. We would like to advise you that time is the essence in the remaining work Syracuse Rigging Co. has to do. Only by an all out and extremely costly effort will the Torrington Construction Co., Inc. be able to finish this bridge to avoid the even greater cost of letting the job winter over until spring completion.

We strongly advise you to inform Syracuse Rigging Co. immediately that their work is to be finished at the fastest possible speed regardless of cost. This approach is ultimately going to reduce Fort Pitt's expenses in any ensuing action regarding the structural steel on this contract.

Very truly yours,

**TORRINGTON CONSTRUCTION
CO., INC.**

Theodore Zoli, Jr.
Vice President

TZ:mp

Petition for Removal.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of New York,
Albany Division

TORRINGTON CONSTRUCTION CO., INC.,
Plaintiff.

v.

SPANG INDUSTRIES INC., FORT PITT
BRIDGE DIVISION,
Defendant.

Civil Action No. 72-CV-463.

The petition of Spang Industries Inc. respectfully represents:

1. Torrington Construction Co., Inc., the above-named plaintiff, has filed suit against the above-named defendant in the Supreme Court of New York, County of Washington, at Index No. A true and correct copy of the complaint is attached hereto, marked Exhibit "A" and incorporated hereby by reference.

2. The initial pleading setting forth the claim for relief upon which such action is based was served on defendant on

3. Plaintiff is a corporation organized and existing under the laws of a State other than Pennsylvania and with its principal place of business in Torrington, Connecticut. Defendant is a corporation organized and existing under the laws of the

Petition for Removal—72-CV-463.

Commonwealth of Pennsylvania and having its principal place of business in the County of Butler, Pennsylvania. Both plaintiff's claim and defendant's counterclaim exceed \$10,000 exclusive of interest and costs.

4. Jurisdiction of the said action is conferred on this court by 28 U.S.C.A. § 1332.

WHEREFORE, defendant requests that the action be removed to this court as provided by 28 U.S.C.A. §§ 1441 and 1446.

EARL H. GALLUP, JR.

Of Counsel:
William T. Marsh
P. O. Box 751
Butler, Pa. 16001

McNAMEE, NICHOLS, LOCHNER
& TITUS,
75 State Street,
Albany, NY 12201.

Commonwealth of Pennsylvania, } ss.:
County of Butler.

Before me, the undersigned authority, personally appeared WILLIAM T. MARSH, who being duly sworn according to law, deposes and says that he is Secretary of Spang Industries Inc., the within petitioners, that as such he is duly authorized to execute this affidavit on its behalf, and that the averments contained in the within petition are true and correct.

WILLIAM T. MARSH

Answer and Counterclaim—72-CV-463.

Sworn to and subscribed before me this 28th day of September, 1972.

BEATRICE L. KELLY,

Notary Public.

My Commission Expires: Aug. 21, 1976.

Answer and Counterclaim.

In the

UNITED STATES DISTRICT COURT

for the Northern District of New York,
Albany Division

TORRINGTON CONSTRUCTION CO., INC.,

Plaintiff,

v.

SPANG INDUSTRIES INC., FORT PITT
BRIDGE DIVISION,

Defendant.

Civil Action No. 72-CV-463

First Defense

The Complaint fails to state a claim upon which relief can be granted.

*Answer and Counterclaim—72-CV-463.**Second Defense*

The averments of paragraphs 1, 2, and 3 are admitted. The averments of paragraph 4 are admitted except that defendant has no knowledge as to whether the general contract was unit price in form or lump sum price. It is admitted that plaintiff and defendant entered into a written subcontract for the furnishing, fabricating and erecting of the structural steel, Item 29, on the general contract designated FARC 69-104; Exhibit "1" attached to plaintiff's complaint is not, however, a true copy of that contract. It is admitted that the letters attached to the Complaint and marked Exhibits 2 through 11 are true copies of correspondence between the parties, but all averments by which plaintiff purports to paraphrase or characterize the contents thereof are denied. All remaining averments are denied except that it is admitted that all the structural steel on this job was delivered by defendant to the job site and erected by defendant's subcontractor, Syracuse Rigging Company and that the completion of the erection occurred on October 6, 1970.

COUNTERCLAIM.

1. Under date of September 9, 1969, Torrington Construction Co., Inc., entered into a contract with the New York State Department of Transportation by which Torrington agreed to supply all the materials and perform all the work necessary to accomplish the construction of a portion of State Highway No. 8479 in the County of Washington in New York and to complete the same on or before December 15, 1971, in consideration of the sum of \$2,751,962.70. Said contract is known as FARC 69-104.

2. By written agreement consisting of defendant's written quotation dated September 5, 1969, accepted by Torrington

Answer and Counterclaim—72-CV-463.

under date of October 28, 1969, and Torrington's letter dated October 9, 1969, defendant agreed to furnish, fabricate and erect the structural steel, Item 29, required in the performance of the aforesaid contract FARC 69-104 for the price of 27.5 cents per pound, the final pay weight to be as established by the New York Department of Transportation. True and correct copies of the documents constituting this contract are attached hereto, marked Exhibit "A" and incorporated herein by reference.

3. Defendant fully performed its said contract, and completed Item 29 on October 6, 1970, so that plaintiff was able to complete its general contract FARC 69-104, a full year earlier than the contract completion date, thus enabling plaintiff to avoid the entire construction season of 1971. The steel was shipped from defendant's plant in Canonsburg, Pennsylvania, in separate shipments beginning August 21, 1970, and ending September 2, 1970. Erection was completed October 6, 1970.

4. The New York Department of Transportation has established a final pay weight of 480,999 pounds on Item 29, so that the total amount due from Torrington to Fort Pitt was \$132,274.73, against which Torrington has paid only \$108,983.92, leaving a balance due of \$23,290.81 plus interest on the balance and on late payments, all of which remains unpaid despite repeated demands for payment.

5. In addition, at the special oral instance and request of plaintiff, defendant sold and delivered to plaintiff extra anchor bolts and plates for \$77.55, which amount remains unpaid despite repeated demands for payment.

6. On July 7, 1971, defendant filed suit against Torrington's bonding company on this job, The Aetna Casualty and Surety Company, at Civil Action No. 71-643 in

Answer and Counterclaim—72-CV-463.

the United States District Court for the Western District of Pennsylvania, to collect the balance due from Torrington to defendant as set forth in this counterclaim. The venue of that action has been transferred to the Northern District of New York, and the two actions should be consolidated for trial.

WHEREFORE, defendant demands judgment in the amount of \$23,368.36 plus interest and costs of suit.

McNAMEE, LOCHNER, TITUS &
WILLIAMS,

By.....,
Earl H. Gallup, Jr.,
75 State Street,
Albany, N. Y. 12201.

Of Counsel:

.....
William T. Marsh,
P. O. Box 751,
Butler, Pa. 16001.

Reply to Counterclaim.

UNITED STATES DISTRICT COURT

Northern District of New York

TORRINGTON CONSTRUCTION CO., INC.,
Plaintiff,

against

**SPANG INDUSTRIES, INC., FORT PITT
BRIDGE DIVISION,**
Defendant.

No. 72 CV 463

Plaintiff, for a Reply to the Counterclaim of the defendant in the above-entitled action, by its attorneys, McClung, Peters and Simon, upon information and belief alleges as follows:

1. Plaintiff admits the allegations set forth and contained in Paragraph designated "1" of the Counterclaim, except that it denies that the consideration of the alleged contract was in lump sum form, since the said contract was unit price in form, and further denies any and all allegations in said paragraph contrary to the terms and provisions of said contract and the documents referred to therein.

2. Denies that the contract attached to the counterclaim is a true and correct copy of the contract between the parties hereto, and for the terms and provisions of said contract plaintiff refers to said subcontract and denies any and all allegations contrary thereto.

Reply to Counterclaim—72-CV-463.

3. Plaintiff alleges that the defendant did not fully perform its contract until October 8, 1970, and denies any and all other allegations set forth and contained in paragraph designated "3" of said counterclaim.

4. Plaintiff denies the allegations set forth and contained in paragraphs designated "4" and "5" of the counterclaim.

5. Plaintiff's action was commenced in the Supreme Court, County of Washington, State of New York, by the service of a summons dated November 12, 1971 on defendant on or about December 17, 1971. The action referred to in paragraph designated "6" of the counterclaim of the defendant was transferred by order of the United States District Court for the Western District of Pennsylvania to this court by order dated December 9, 1971, said action being filed against the plaintiff named in the above-entitled action, as well as a second defendant, namely, The Aetna Casualty and Surety Company.

WHEREFORE, plaintiff demands judgment dismissing the counterclaim of the defendant, together with the costs and disbursements of this action.

McCLUNG, PETERS AND SIMON,
By Homer E. Peters,
Attorneys for Plaintiff,
75 State Street,
Albany, New York 12207.

Findings of Fact and Conclusions.

UNITED STATES DISTRICT COURT
For the Northern District of New York

SPANG INDUSTRIES, INC., FORT PITT
BRIDGE DIVISION, a corporation, *Plaintiff,*

v.

THE AETNA CASUALTY AND SURETY CO.,
a corporation, *Defendant.*

Civil Action No. 72-CV-22

TORRINGTON CONSTRUCTION CO., INC., *Plaintiff,*

v.

SPANG INDUSTRIES, INC., FORT PITT
BRIDGE DIVISION,
Defendant and Third Party Defendant,

v.

SYRACUSE RIGGING CO., INC.,
Third Party Defendant.

Civil Action No. 72-CV-463

Torrington Construction Co., Inc., (herein called
"Torrington") is a Connecticut corporation with its principal

Findings of Fact and Conclusions.

place of business in New York. Spang Industries, Inc., Fort Pitt Bridge Division (herein called "Fort Pitt") is a Pennsylvania corporation with its principal place of business in Pennsylvania. The Aetna Casualty and Surety Company ("Aetna") is a Connecticut corporation with its principal place of business in Connecticut. Syracuse Rigging Company, Inc. ("Syracuse") is a New York corporation with its principal place of business in New York.

Spang Industries, Fort Pitt Division, instituted this litigation by an action in the United States District Court, for the Western District of Pennsylvania against Torrington's surety, Aetna Casualty and Surety Co. to recover on the balance claimed due on a subcontract with Torrington. This action was removed to this court by order dated December 9, 1971, and designated in the Northern District of New York as Docket No. 72-CV-22.

Torrington commenced an action against Fort Pitt in the New York Supreme Court, Washington County, which was ordered removed to this court, designated as 72-CV-463. In this action Torrington, as the prime contractor, seeks to recover damages from an alleged breach by Fort Pitt of the terms of the subcontract for fabricating and erecting structural steel. Fort Pitt denied liability and filed a counterclaim for the balance due for the steel furnished Torrington. Fort Pitt, in this action, filed a third party claim against Syracuse Rigging Co., the company engaged by Fort Pitt to erect the structural steel furnished to Torrington.¹

¹ A companion action 72-CV-117, *Syracuse Rigging Co., Inc. v. Fort Pitt Bridge Works*, a Division of Spang Industries, Inc., before Honorable Edmund Port, District Judge, was settled without prejudice to the third party claim made by Fort Pitt, as third party complainant against Syracuse Rigging. The claim relates to a claim for unloading steel on a railroad gondola.

(Footnote continued on following page)

Findings of Fact and Conclusions.

In this combination of actions the interests of Torrington and Aetna are identical and these parties were represented by the same counsel. The final judgments will be entered in accordance with this posture of the litigation.

All actions were heard together in a single trial to the court. Upon consideration of the evidence presented, the court reports the following findings of facts.

FINDINGS.

1. Torrington successfully bid a highway construction contract with the New York State Department of Transportation for the reconstruction of a portion of New York Highway Route 313 in Washington County. The contract, dated September 4, 1968, is designated No. FARC 69-104.

2. Between the time of the awarding of the contract and the commencement of construction, Torrington prepared and submitted to the New York State Department of Transportation a proposed Construction Progress Chart. This schedule was required by the specifications and provided for construction to commence October 1, 1969 and to be completed December 15, 1971.

3. Although this commitment to the State of New York afforded more than two years for completion and acceptance, Torrington bid the job on the basis that the job would be completed in 1970. The job was finally accepted by the State of New York by letter dated January 21, 1971.

(Footnote continued from preceding page)

Torrington, in the main action, has asserted a claim for unloading. The stipulation provides that if Torrington's claim for unloading the steel at the rail head is not allowed by this court, Fort Pitt will pay Syracuse \$1,448. If part of Torrington's claim is allowed, Syracuse will be paid by Fort Pitt, the difference between the allowed recovery for this claim and \$1,448.

Findings of Fact and Conclusions.

4. The specifications further provided that:

"If found satisfactory the District Engineer shall approve, and the work shall be progressed in accordance with such schedules or approved amendments thereto."

The Construction Progress Chart was formally approved by the District Engineer by letter to Torrington dated September 22, 1969. The approval was signed on behalf of the District Engineer by C. W. Duprey, the Construction Engineer in charge of this project for the New York Department of Transportation. The Construction Progress Chart was never amended.

5. The Construction Progress Chart is divided into fifteen (15) principal categories of work required under the prime contract, each of which is identified by its principal features, the contract item numbers and the total sum bid under each category.

6. This action concerns the two-span bridge which was designated as Item 29. Before Torrington submitted its bid on the main contract it obtained a bid or "quotation" from Fort Pitt on Item 29. The bid was accepted by Torrington. This bid and acceptance constitutes the subcontract in suit and was composed by the following series of communications between the parties.

7. On September 5, 1969, Fort Pitt's sales engineer, Michael J. Alterio, wrote a letter to Torrington to confirm the prior oral quotation of August 27, 1969, quoting a unit price of 27.5 cents per pound for fabricating, furnishing and erecting the structural steel in the total amount of 240 tons required for the bridge construction. The letter includes these statements:

Findings of Fact and Conclusions.

"All agreements contingent upon strikes, accidents, mail deliveries and other causes beyond our control. Terms—Net cash thirty (30) days from date of invoice—Our erection quotation is based on one (1) move in.—Delivery to be mutually agreed upon.—"

8. Torrington's acceptance includes its selection of an optional lower unit price of 27.5 cents. This choice was based on Torrington's rental to Fort Pitt's erector, Syracuse Rigging "—for the lump sum of \$2,200.00 a crane with sufficient capacity to carry out this work, the operating personnel for the same, and a compressor which will be operated by our erector's men. The crane must be available for unloading at the rail head and also for the erection of the steel. The 27.5/lb. price does not include the rental for \$2,200.00."

9. On October 13, 1969, Fort Pitt requested Torrington to advise of its delivery and erection requirements for the structural steel. Torrington replied November 3, 1969 that its requirements for delivery and erection of the steel would be late June 1970. Torrington notified Fort Pitt November 12 that it was tentatively scheduling delivery in accordance with the prime contractor's requirements.

10. Later on in January 1970, Fort Pitt requested Torrington to advise them if the date of late June 1970 was still valid. Torrington replied on January 13, 1970 that the June date was still valid. By letter dated January 29, 1970, Fort Pitt informed Torrington they were engaged in an extensive expansion program. The letter went on to say that "—due to unforeseen delays caused by weather, deliveries from suppliers, etc.—" Fort Pitt could not meet the June delivery date, but would inform Torrington as to anticipated delivery as promptly as possible. Torrington replied by letter dated February 2, 1970, requesting Fort Pitt to inform

Findings of Fact and Conclusions.

Torrington of the estimated days when the material would be delivered and erected. There was no further communication on this subject until Torrington, on May 12, 1970, protested the nine month delay on the part of Fort Pitt to assign a date and provide written confirmation for the delivery of the structural steel.² Fort Pitt responded in a letter dated May 20, 1970, to inform Torrington that the structural steel would be shipped early in August 1970.

11. Torrington started work on the project in September 1969, the same month the prime contract was awarded. Its work force and equipment assigned to the project continued on the job until January 1970, when the preliminary work was halted for the remainder of the winter. Construction work resumed in May. By August 1970 the job was essentially completed except for the bridge. Earth excavation and grading were finished and all concrete was poured except for the approaches to the bridge. The bridge abutments were completed and ready to receive the steel structure by August. The bridge constituted about twenty per cent of the total contract.

12. Prior to August 21, 1969, Fort Pitt had shipped less than a ton of steel composed of miscellaneous anchor assemblies and bolts. On August 21, 1969, various plates, bearings, diagonals, diaphragms, pads, cross frames etc., of total

² The concluding paragraph of the letter of May 12 states:

"Our position is basically this. Confirm within ten days of this letter the delivery date in writing for material to be furnished our company in accordance with our contract and in reasonably close proximity of our original request for the delivery of the steel or our contract is cancelled. In that event we will assume no financial responsibility for any work already performed by Fort Pitt and reserve the right to institute recovery momentarily for any delays caused by the reprocessing of our order with another firm."

Findings of Fact and Conclusions.

weight approximately 25 tons, were shipped from Canonsburg, Pennsylvania. August 24, 1970, the first girders were shipped to Torrington at Shushan, New York. Successive separate shipments of heavy structural steel were made on August 26, 27, 31, September 2, and 4, 1970.

13. The September fourth shipment included the last two girders and the expansion joints. It arrived at Shushan, September 17. The aggregate weight of all shipments as of this date was 477,004 lbs. On November 4, 1970, Fort Pitt concluded the shipments to Torrington by forwarding bridge scuppers, weight 3,900 lbs. The total weight of the steel supplied by Fort Pitt to Torrington was 480,904 lbs.

14. Fort Pitt failed to notify Syracuse of the shipment of August 21. The steel began arriving at the Shushan rail head about September 1. The railroad demanded immediate unloading. As a result Torrington was called upon to do the unloading without the aid of Syracuse.³ Syracuse Rigging crew checked in at the construction site on September 8, 1970. Syracuse's crew, working with Torrington equipment and operators, completed the unloading of the gondolas at the rail head.

³ Pursuant to a letter dated September 5, 1969, Torrington agreed with Fort Pitt to rent to Syracuse, for the sum of \$2,200.00, a crane and operating personnel to be available for unloading steel at the rail head and for the erection of the steel. When the first steel arrived at the rail head on or about September 1, 1970, Fort Pitt did not have a crew available to unload the steel and failed to notify Syracuse of the expected arrival date to enable Syracuse to unload the steel when it reached the rail head. Because of the delay in the arrival of the steel, Torrington did not have a crane available on the job site to unload the gondola. Torrington had to unload the steel with its own crew and equipment without the benefit of their crane and a crew from Fort Pitt or Syracuse.

(Footnote continued on following page)

Findings of Fact and Conclusions.

(Footnote continued from preceding page)

Disregarding any overhead factors, Torrington claims the following costs for the unloading of the steel on September 2, 1970:

		Hrs.	Rate/hr.	
<i>Labor</i>	Foreman	9	290 (per wk)	\$58.00
	Operator straight (str.)	8	6.50	52.00
	overtime (ovt.)	1 1/2	9.75	14.63
	Operator str.	8	6.70	53.60
	ovt.	2	10.05	20.10
	Oiler str.	8	5.50	44.00
	ovt.	2	8.25	16.50
	Laborers (4) str.	32	4.99	159.68
	ovt.	6	7.48	44.88
	Truck & Teamster	9	13.50	121.50
				<hr/>
				\$584.89

		Hrs.		
<i>Equipment</i>				
175 Michigan Loader			\$165/day	\$165.00
G-1000 Gradall	10		56.25	562.50
1 Pickup Truck	9		1.50	13.50
				<hr/>
				\$741.00

Total \$1,325.89

The amount allowed is adjusted.

Torrington was paid \$2,200.00 for the use of the crane and operating personnel. The evidence indicates that the rental value of a crane is \$20.00 per hour and the record indicates that the hourly rate for a crane operator is \$6.70 and \$5.50 for an oiler. The evidence of Syracuse was to the effect that if they had timely notice they could have unloaded the steel in five hours. Since Torrington was contractually obligated to provide a crane and operating personnel, the claim of Torrington must be reduced by the reasonable costs attributable to their obligation. Therefore, the claim of Torrington is reduced by the rental rate of a crane and the labor rate of an operator and oiler for five hours. The reduction is \$61.00 for the labor and \$100.00 for the equipment. The total damages would be \$1,164.89; \$523.89 for labor and \$641.00 for equipment.

Findings of Fact and Conclusions.

15. In order for Syracuse to complete the steel construction on either span, it was necessary that all of the girders, which were custom fabricated, be available for the span where they were to be applied. On September 16 sufficient steel had been delivered to the job site to enable Syracuse to start setting. Syracuse proceeded in the performance of its subcontract as expeditiously as possible. In the course of the erection of the girders a defect in the fabricated steel was discovered. The Supervising Engineer for the State of New York rejected the steel until the defect was corrected. Syracuse continued with the performance as far as possible pending the correction of the defect which was accomplished and approved by the State on September 30. The steel was erected on October 6 and Syracuse satisfactorily completed its contract on October 8, 1970. When the steel was installed the bridge was readied for pouring concrete on October 28.

16. By this time of year the danger of freezing weather in Washington County, New York, is imminent. Oftentimes severe frosts occur prior to this date. Continued freezing weather would have required the pouring to be postponed to the return of non-freezing weather in June 1971, since the State of New York requires pouring be accomplished at temperatures of 40° F. (Illegible). To meet this requirement, Torrington decided to (Illegible) and ready the bridge for pouring on a crash basis and to complete the pouring in a single day. This required considerable overtime and added work details. The Supervising Engineer gave special permission for Torrington to pour on October 28, 1970, at 32° F. As it turned out, 32 cubic yards of concrete were rejected by the State because it was below the permitted temperature of 32° F. This rejection cost Torrington \$963.20.

17. The pouring started in the early morning of October 28 and was completed at 1 A.M. October 29. The finishing

Findings of Fact and Conclusions.

work on the poured cement was completed at 9 A.M. In order to complete the pour in a single day it was necessary for Torrington to rent an extra crane and allied equipment at a cost of \$908.00.

18. Had the steel been shipped and delivered in early August, as Fort Pitt had agreed, the race against cold weather and the attendant increased expenses would have been avoided. The court finds that the month delay in the shipment of the steel, beyond the date of early August specified in Fort Pitt's letter to Torrington of May 20, 1970, caused additional expenses to Torrington in the amounts indicated.

Unloading steel from gondola—September 2, 1970

Labor	\$523.89
Equipment	641.00
Expediting bridge preparation—Labor	1,407.03
Premium time on bridge pour	881.91
Premium time on seeding and mulching	194.94
Expediting paving	
Labor	167.68
Equipment	526.50
Premium time for setting bridge curb	97.04
Premium time for bridge demolition	159.83
Watchman service, extended by delayed shipment	432.00
New Jersey Testing Laboratories	175.00
Hay for protection against weather	32.55
Crane rental	855.00
Concrete bucket, generator and night light rental	41.34
Vibrator and cable rental	11.66
Concrete (Item 18MA) rejected due to temperature	963.20
Transporting crane back to job site	543.00

Total Damages \$7,653.57

Findings of Fact and Conclusions.

19. Torrington's claim for compensation for supervisory personnel and overhead is not supported by evidence that directly connects this expense to the delay in the shipment of the girders and is disallowed. Neither was it shown that the return of the D-8 bulldozer, the use of the grader and operator and gravel for the detour were directly related to the steel delivery.

20. Fort Pitt's claim that the delay of thirty days was caused by lack of shipping facilities and its own plant expansion is not supported by any evidence to establish that such factors actually produced the delay. Neither does it appear from Fort Pitt's evidence that such causes were "beyond our (Fort Pitt's) control" as provided in its agreement with Torrington.

21. Fort Pitt's president testified that Torrington's requirement for this project was less than one per cent of its annual bridge steel output for 1970. It appears that the needs of Torrington for its job at Cambridge were overlooked or neglected for other more extensive projects elsewhere.

22. The total contract price for the steel shipped by Fort Pitt is \$132,274.73. Torrington has paid on the contract \$108,983.92, leaving an unpaid balance of \$23,240.12 as of September 7, 1972. Against this balance Torrington is entitled to a credit of \$7,653.57 for damages sustained from Fort Pitt's delayed performance and its failure to have Syracuse Rigging Company on the job to unload the first shipment of girders on or about September 1, 1970.

CONCLUSION.

Fort Pitt's bid on quotation to Torrington specified that delivery of the fabricated steel was to be mutually agreed upon. The correspondence which followed Torrington's acceptance of the bid establishes that June delivery in 1970 was

Findings of Fact and Conclusions.

the time the material was required. Torrington later acquiesced in Fort Pitt's request for a later shipment. When Torrington insisted upon a definite date for shipment, Fort Pitt unconditionally promised shipment in early August 1970. In the presence of this commitment, Fort Pitt's reliance on the Construction Progress Chart, filed by Torrington with the New York Transportation Department, was unjustified. This schedule was, at best, a guide to enable the State to determine that the project was proceeding in timely manner, and to insure completion on the date specified. Torrington had full right to complete the project ahead of schedule and achieve early performance and acceptance at reduced expense to the contractor. Clearly this objective was in its financial interest and this was the basis for Torrington's bid on the total job. Having agreed to shipment early in August, Fort Pitt is not entitled to rely on the outer limits of Torrington's schedule with the State of New York to excuse its delay in shipment of the fabricated steel. The construction of the bridge was the key to the completion of the entire project.

J.S.H

An implied undertaking of good faith prevails in every contract. And there is an implied covenant on the part of both parties to this agreement that neither one should do anything to destroy the rights of the other to receive the full benefit of their contract. *Kirke La Shelle Co. v. Paul Armstrong Co.*, 263 N.Y. 79, 188 N.E. 163, 167 (1933); 3 Williston, Contracts 3670 (Rev. Ed.). Similarly, neither party is entitled to burden the other with overhead and other fixed costs which would attend the normal performance of their respective undertakings. It is upon these considerations that only the expenses directly related to the delayed shipment are allowed against Fort Pitt.

Torrington's acceptance of the steel in September did not constitute a waiver of its right to maintain the present (Illegible) action for the damages it has sustained by reason of

Findings of Fact and Conclusions.

the delayed shipment. Yet the delay affords no defense to Torrington or its surety, Aetna, for Fort Pitt's right to recover according to the price agreed upon. *Mawhirreny v. Millbrook Woolen Mills, Inc.*, 234 N.Y. 244, 137 N.E. 318, 319 (1922). The damages sustained by Torrington, directly caused by Fort Pitt's delay in shipment of the fabricated steel, will be set off against the contract price.

In the action of *Torrington Construction Company v. Spang Industries, Inc., Fort Pitt Bridge Division* (Civil Action 72-CV-22) the plaintiff is entitled to damages in the amount of \$7,653.57.

Spang Industries, Inc., Fort Pitt Bridge Division, a corporation, is entitled to recover on its counterclaim in this action to recover the contract price of \$23,290.12 reduced by the damages sustained by Torrington of \$7,653.57. Judgment will be entered for the defendant Spang Industries, Inc., Fort Pitt Bridge Division against Torrington Construction Co. and Aetna Casualty and Surety Co., (Civil Action 72-CV-463), on their joint and several liability at the amount of \$15,636.55, with interest at the legal rate in the State of New York from November 12, 1970.

In the third party action of *Spang Industries, Inc., Fort Pitt Bridge Division v. Syracuse Rigging Co., Inc.*, judgment will be entered for the third party defendant for third party defendant to recover its costs.

Dated at Rutland, Vermont, this 10th day of September, 1973.

JAMES S. HOLDEN,
U.S. District Judge, District of Vermont
sitting by designation in the U.S.
District Court, Northern District
of New York.

Judgment.

UNITED STATES DISTRICT COURT
Northern District of New York

SPANG INDUSTRIES, INC., FORT PITT
BRIDGE DIVISION, a corporation, *Plaintiff,*

against

THE AETNA CASUALTY AND SURETY CO.,
Defendant.

Civil No. 72-CV-22.

TORRINGTON CONSTRUCTION CO., INC., *Plaintiff,*

against

SPANG INDUSTRIES, INC., FORT PITT
BRIDGE DIVISION,
Defendant and Third-Party Plaintiff,

against

SYRACUSE RIGGING CO., INC.,
Third-Party Defendant.

Civil No. 72-CV-643.

**The issues in the above-entitled actions having been duly
joined and having been tried before the Hon. James S.**

Judgment.

Holden, United States District Court Judge, District of Vermont, sitting by designation in the United States District Court, Northern District of New York, and the trial having been conducted without a jury, and Spang Industries, Inc., Fort Pitt Bridge Division, plaintiff in the first above-entitled action and defendant in the second above-entitled action, having appeared by McNamee, Lochner, Titus and Williams, with Earl H. Gallup, Jr., Esq. and William T. Marsh, Esq. of counsel; and Torrington Construction Co., Inc., plaintiff in the second above-entitled action, and The Aetna Casualty and Surety Co., defendant in the first above-entitled action, having appeared by McClung, Peters and Simon, Homer E. Peters, Esq., of counsel, and the third-party defendant, Syracuse Rigging Co., Inc., having appeared by Melvin and Melvin, Gerald W. Mathews, Esq. of counsel, and the issues having been duly tried and the Court having rendered its decision in the form of Findings of Fact and Conclusions of Law, and having filed the same in the office of the Clerk of the Court on or about September 12, 1973, said decision being dated September 10, 1973.

NOW, on motion of McClung, Peters and Simon, attorneys for The Aetna Casualty and Surety Co. and Torrington Construction Co., Inc., it is

ORDERED AND ADJUDGED that said parties recover from Spang Industries, Inc., Fort Pitt Bridge Division, as a credit against any and all sums due and owing the said parties the sum of \$7,653.57 for damages sustained from the aforesaid Fort Pitt Bridge Division's delayed performance and its failure to have Syracuse Rigging Co., Inc. on the job site to unload the first shipment of girders on or about September 1, 1970, and that said Spang Industries, Fort Pitt Bridge Division, a corporation, recover the sum of \$15,636.55

Judgment.

from the aforesaid Torrington Construction Co., Inc. and the Aetna Casualty and Surety Company, together with interest from November 12, 1970, amounting in all to the sum of \$18,371.68, and that the third-party plaintiff's action of Spang Industries, Inc., Fort Pitt Bridge Division, against Syracuse Rigging Co., Inc. be dismissed with judgment in favor of said third-party defendant, together with costs to be taxed by the Clerk of the Court.

Judgment signed and entered this 15th day of October, 1973
at Utica, New York.

J. R. SCULLY,
Clerk, U. S. District Court
Northern District of New York.

Order.

UNITED STATES DISTRICT COURT
For the Northern District of New York

SPANG INDUSTRIES, INC., FORT PITT
BRIDGE DIVISION, a corporation,
Plaintiff,
v.

THE AETNA CASUALTY AND SURETY CO.,
a corporation,
Defendant.

Civil Action No. 72-CV-22.

TORRINGTON CONSTRUCTION CO., INC.,
Plaintiff,
v.

SPANG INDUSTRIES, INC., FORT PITT
BRIDGE DIVISION,
Defendant and Third Party Defendant,
v.

SYRACUSE RIGGING CO., INC.,
Third Party.

Civil Action No. 72-CV-463.

Following the entry of judgment by the Clerk on direction by the court, Spang Industries, Inc., Fort Pitt Bridge Division, filed a motion for amendment of findings, additional findings and motion to amend the judgment under Fed. R. Civ. P. 58(b). Upon consideration of the written arguments of counsel, it is hereby **ORDERED**:

Request No. 1 presents to the court for the first time a claim for interest on late payments of approximately \$51,000 received by Spang Industries from Torrington Construction

Order.

Co., Inc., between December 11, 1970, and September 1, 1972. Spang's request for interest on these payments, which were accepted by Spang without protest, is unaccompanied by reference to decisional or statutory authority. The request is denied. See *Crane v. Craig*, 230 N. Y. 452, 130 N. E. 609, 612 (1921); Annot., 100 A. L. R. 96 (1936); cf. *Grippio v. Davis*, 92 Conn. 963, 104 A. 165, 167 (1918).

Request No. 10, that the last sentence of paragraph 9 of the findings be amended to correct the accidental transposition of the parties, is granted. The last sentence of paragraph 9 is hereby amended to read:

Fort Pitt notified Torrington November 12 that it was tentatively scheduling delivery in accordance with the prime contractor's requirements.

All other proposed amendments to the findings of fact contained in Fort Pitt's motion are denied.

The Clerk is directed to amend the judgment for Spang Industries, Inc., Fort Pitt Bridge Division, to recover on its counterclaim against Torrington Construction Co., Inc., in the amount of \$15,636.55, with interest, as agreed by the parties, at 7-1/2 percent from November 12, 1970, to the date of this amended order. The original judgment, as it relates to the dismissal of the third party action of Spang Industries, Inc., Fort Pitt Bridge Division against Syracuse Rigging Co., Inc., will stand as entered on October 15, 1973.

Dated at Rutland, Vermont, this 12th day of December, 1973.

JAMES S. HOLDEN,
*U. S. District Judge,
District of Vermont
sitting by designation in
the U. S. District Court,
Northern District of
New York.*

Notice of Amended Judgment.

CLERK'S OFFICE
 United States District Court
 FOR THE
 Northern District of New York

Spang Industries, Inc.
 Fort Pitt Bridge Division

The Aetna Casualty and Surety Co. }
 Torrington Construction vs. Spang Industries, Inc. }

72-CV-22

Civil Action No. 72-CV-463

There was entered on the docket
 and amended

Dec. 13

, 19 73

an order/(judgment) in favor of Spang Industries against
 Torrington Construction Co. in the sum of \$15,636.55
 w/int.at 7½% from 11/12/70 to 12/12/73 in amount of
 \$3,615.95, total \$19,252.50.

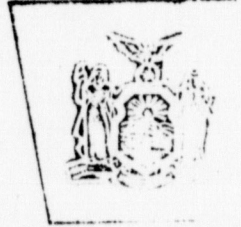
J.R. Scully , CLERK

A.O. NO. 145

COP. R 167c (8/59)

Washington 69-1.

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

C1377F.A.R.C. 69-104
36412**PROPOSAL**

Submitted in accordance with specifications adopted
January 2, 1962 including addenda 1 through 45 as
adopted August 28, 1969 and the Highway Law

Letting of AUG 28 1969

10:30 A.M.

OFFICE OF LEGAL AFFAIRS

CONTRACTS AND CLAIMS BUREAU

TORRINGTON EXHIBIT "1"

FARC 69-104
FA PROJ. NO. S-810(3)

July 7, 1969

DEPARTMENT'S PRELIMINARY ESTIMATE FOR RECONSTRUCTING WITH
FEDERAL AID, A PORTION OF THE:

CAMBRIDGE - ANAQUASSACOOK - VERMONT STATE LINE
STATE HIGHWAY NO. 8479

WASHINGTON COUNTY

Pavement	22'-48'	Roadway	36'-56'	Length	4.47 Mi.
					(Plus 0.3 Mi. Acc.)

Type & Thickness: Mainline: 2-1/2" Asph. Conc. = 4.46 Mi.
Access: 2-1/2" Asph. Conc. = 0.3 Mi.
Including
Br. #1, 2 Sp. Comp. Gird., 272' Tot. Length

Standard Sheets: 50-34; 51-13A; 58-60; 61-62A, 62BR; 62-6;
63-10, 62C; 64-45, 45A, 45B; 65-45C, 52B;
66-13C, 33, 53; 67-1, 19, 35, 43CR2, 57;
67-64AR1, 64BR1, 64C; 68-7ES, 14A, 14B, 15;
68-19A, 43A, 67R2; 69-43B.

DEPOSIT REQUIRED.....\$ 185,000.-

DEPARTMENT'S PRELIMINARY ESTIMATE
OF COST OF WORK.....\$3,340,000.-

NOTE: NO CONTRACT SHALL BE AWARDED AT A GREATER SUM THAN THAT REQUIRED FOR THE WORK ALONE AS SHOWN BY THE DEPARTMENT'S ESTIMATE.

NO CONTRACT MAY BE AWARDED IF THE AMOUNT BID ON ANY LUMP SUM ITEM OR ON ANY PUBLISHED UNIT PRICE ITEM EXCEEDS BY MORE THAN 25% THE AMOUNT SHOWN BY THE DEPARTMENT'S ESTIMATE FOR THAT ITEM.

CAPITAL PROJECT IDENTIFICATION NO. 1032.00

AR

1 of 7

FARC 69-104

SPECIAL NOTELIQUIDATED DAMAGES

In accordance with the Provisions of Addendum No. 27 to the New York State Department of Public Works Specifications of January 2, 1962 (First Printing) and subsection Failure to Complete on Time, on Page 48 (Second Printing) the sum of

Three Hundred Dollars (\$300.00) per Calendar Day shall be the amount of assessed Liquidated Damages specified for this contract.

9/22/65
12/12/66

FARC 69-104

ITEMIZED PROPOSAL

FOR RECONSTRUCTING WITH FEDERAL AID, A PORTION OF THE:

CAMBRIDGE - ANAQUASSACOOK - VERMONT STATE LINE
STATE HIGHWAY NO. 8479
FA PROJECT NO. S-810(3)

WITH

MAINLINE:
ASPHALT CONCRETE = 4.46 MILES

ACCESS:
ASPHALT CONCRETE = 0.3 MILE

INCLUDING

BRIDGE #1, 2 SPAN COMPOSITE GIRDER, 272' TOTAL LENGTH

A TOTAL LENGTH OF 4.47 MILES (PLUS 0.3 MILE OF ACCESS)
IN THE COUNTY OF WASHINGTON
WHICH CONSTITUTES CONTRACT NO. FARC 69-104

(Rte. 313)

143

The work proposed herein must be completed by December 15, 1971*

*See "Liquidated Damages Note" in Special Notes Section of this Proposal.

ar

Torrington Exhibit "12".

**NEW YORK STATE
DEPARTMENT OF TRANSPORTATION**

(SEAL)

1220 Washington Avenue, State Campus,
Albany, New York 12226

January 21, 1971

Torrington Construction Co., Inc.
P. O. Box 388
Torrington, Conn. 06790

Dear Sir:

The following named contract was accepted by the Commissioner of Transportation on January 21, 1971:

FARC 69-104

D 36412

Proj. S-810(3)

Washington County

Very truly yours,

Paul D. Smith
Assistant Deputy Chief Engineer.

PDS:RC:IW

cc: State Comptroller—Acceptance Attached
Regional Director
Bureau of Public Roads
Final Plan Review Bureau
Capital Projects Coordination Bureau

Fort Pitt Exhibit "G".

Real Property Division
Director, Engineering Research and Development
Bureau
Contract Payment Unit—Please make 50% release of
retained monies.

HC 112 (11/69)

Fort Pitt Exhibit "G".

FORT PITT BRIDGE WORKS
Subsidiary of Spang & Company
Canonsburg, Pennsylvania 15317
Telephone (412) 281-0654

Executive Offices
Butler, Pennsylvania

September 5, 1969

Torrington Construction Co., Inc.
P. O. Box 561
Glens Falls, New York 12801

Re: New York State Department of Transportation
Project FARC 69-104
Washington County

Attention: Theodore Zoli, Jr.
Vice President

Gentlemen:

Confirming our verbal quotation of August 27, 1969, we are
pleased to quote as follows:

Fort Pitt Exhibit "G".

All agreements contingent upon strikes, accidents, mill deliveries and other causes beyond our reasonable control.

For furnishing, fabricating and erecting the structural steel, Item No. 29, in accordance with plans and specifications prepared by New York State Department of Transportation, we quote the unit price of 28.1¢ per pound.

Estimated Weight—Approximately 240 tons

For furnishing, fabricating and erecting the structural steel, Item No. 29, in accordance with plans and specifications prepared by New York State Department of Transportation, we quote the unit price of 27.5¢ per pound, based on Torrington Construction Company, Inc. renting to our erector, Syracuse Rigging Co., for the lump sum of \$2,200.00, a crane with sufficient capacity, to carry out this work, the operating personnel for same, and a compressor which will be operated by our erector's men. The crane must be available for unloading at the rail head and also for the erection of steel. The 27.5¢lb. price does not include the rental for \$2,200.00.

Contract for crane rental and including operating personnel, and compressor, shall be between Torrington Construction Co., Inc. and Syracuse Rigging, Inc.

Our price includes one (1) standard shop coat of paint.

We exclude the following from our bid: Furnishing of shear connector or erection of same, furnishing or erection of drainage material, maintenance of traffic, cost of flagmen, touch-up or field painting, field inspection and testing, field engineering, and setting or grouting of anchor bolts.

Fort Pitt Exhibit "G".

We require an access road be maintained by others from public highways to bridge sites for moving cranes and equipment. Suitable access ramps are to be provided to the river bed for the erection and also for trucking of girders for each span. Our erection quotation is based on one (1) move-in.

Terms—Net cash thirty (30) days from date of invoice.

We cannot be responsible for any deterioration of paint due to lengthy exposure.

Delivery to be mutually agreed upon.

Our erection quotation is based on a forty (40) hour work week, five (5) eight (8) hour days, Monday through Friday. If TZ ~~for any reason~~ at the Torrington Const. Co's request it becomes necessary to work additional hours, cost of premium time, plus insurance and Social Security benefits to be for your account.

In all particulars not specifically covered herein, all materials shall be furnished, delivered and erected in accordance with the current edition of the Code of Standard Practice of American Institute of Steel Construction.

We have made no provision in this quotation for any tax imposed by any present or future law, Federal, State, Municipal or any other Governmental agency (with the exception of the present 3% New York State and Washington County Sales Tax which we, as consumers, have included) on the sale of materials covered hereunder, and if applicable to this proposition such tax or taxes must be added to price herein quoted.

Fort Pitt Exhibit "G".

This quotation subject to review if not accepted within thirty (30) days. All contracts subject to Credit Department approval.

ACCEPTED BY:

TORRINGTON CONST. CO. INC.

(Firm Name)

By THEODORE ZOLI JR.

Date 10/28/69

Yours very truly,

FORT PITT

BRIDGE WORKS

MICHAEL J. ALTERIO

Michael J. Alterio

Sales Engineer

MJA/sjb

cc: (1)

CONTRACT:

C-1377

cc: DMB-JBH-JBN-JAB-WLS-FAB

FAIR PITT BRIDGE WORKS

BUSINESS OF MAGNETICS INC.
 POST OFFICE BOX 751
 BUTLER, PENNSYLVANIA
 ZIP CODE 16001

ORDER FILE

DATE SHIPPED 9/4/70	OUR ORDER NO. C-1377	CUSTOMER ORDER NO.	TERMS XXXTODAYS NET 30	VIA	DATE 9/08/70
------------------------	-------------------------	--------------------	---------------------------	-----	-----------------

SHIPPED TO

SOLD TO
 Torrington Construction Company, Inc.
 P. O. Box 561
 Glens Falls, New York 12031

QUANTITY	PRICE	DESCRIPTION	ACCT	GROSS EXTENSION	NET AMOUNT
		Project: FARC 63-104 - Washington County N.Y. State Department of Trans.			
		Fabricated Structural Steel Furnished, 477,004 lbs. @ .226/lb.		\$107,802.90	\$107,802.90
		FOR OUR RECORDS ONLY C-1377 Sales \$107,802.90			

FAIR PITT EXHIBIT "J"

INVOICE NO. 1437

FREIGHT AND ACCOMMODATION CHARGES ARE STRICTLY NET CASH INTEREST CHARGED AFTER 60 DAYS MATERIALS COVERED BY THIS INVOICE WERE PRODUCED IN CONFORMITY WITH THE FAIR LABOR STANDARDS ACT OF 1938, AS IN EFFECT AT THE TIME OF PRODUCTION.

FORT PITT BRIDGE WORKS

SUBSIDIARY OF MACNETICS, INC.
 POST OFFICE BOX 751 • TELEPHONE 287-878
 BUTLER, PENNSYLVANIA
 ZIP CODE 16001

ORDER FILE

DATE SHIPPED	DATE ORDER NO.	CUSTOMER ORDER NO.	TERMS	DATE
	C-1377		N.E. 30 DAYS NET 30	10/12/70

SHIPPED TO

• Torrington Construction Co., Inc.
 P. O. Box 561
 Glens Falls, New York 12601

SOLD TO

QUANTITY	PRICE	DESCRIPTION	ACCT.	GROSS EXTENSION	NET AMOUNT
		Project: FANC 60-104 - Washington County N. Y. State Department of Infra.			
		Fabricated Structural Steel Erected.			
		477,034 lbs. @ .049/lb.		\$23,373.20	\$23,373.20
		FOR OUR RECORDS ONLY Acct. 202 Syracuse P.E. 100. Erector \$23,373.20			

FORT PITT EXHIBIT "J"

INVOICE NO. 1415

FREIGHT AND ACCOMMODATION CHARGES ARE STRICTLY NET CASH. INTEREST CHARGED AFTER 60 DAYS. MATERIALS COVERED BY THIS INVOICE WERE PRODUCED IN CONFORMITY WITH THE FAIR LABOR STANDARDS ACT OF 1937, AS IN EFFECT AT THE TIME OF PRODUCTION.

FORT PITT STRUCTURAL WORKS

POS
SUBSIDIARY OF MAGNETICS, INC.
FILE BOX 751 • TELEPHONE 287-878
BUTLER, PENNSYLVANIA
ZIP CODE 16001

CASH FILE

DATE SHIPPED	OUR ORDER NO.	CUSTOMER ORDER NO.	TERM	VIA	DATE
	C-1377		2.2% 10 DAYS- NET 30		11/25/79

SHIPPED TO

• Torrington Construction Co., Inc.
P. O. Box 551
Glens Falls, New York 12091

QUANTITY	PRICE	DESCRIPTION	ACCT	GROSS EXTENSION	NET AMOUNT
		Project: IAF 60-194 - Washington Court, New York State Department of Transportation			
		Fabricated Structural Steel Furnished and Erected.			
		451,013 lbs. - Final Pay Amount			
		477,094 lbs. - Previously billed			
		<u>4,916 lbs. @ .275/lb.</u>		\$1,104.13	\$1,104.13
		FOR OUR RECORDS ONLY			
		C-1377 Balcs <u>\$997.39</u>			
		Acct. 202 Syracuse Rigging, Erector <u>196.74</u>			
					<u>\$1,104.13</u>

INVOICE NO. 1471

FREIGHT AND ACCOMMODATION CHARGES ARE STRICTLY NET CASH. INTEREST CHARGED AFTER 60 DAYS. MATERIALS COVERED BY THIS
INVOICE WERE PRODUCED IN CONFORMITY WITH THE FAIR LABOR STANDARDS ACT OF 1936, AS IN EFFECT AT THE TIME OF PRODUCTION.

FORT PITT BUILDING WORKS

SUBSIDIARY OF MAGNETICS INC.
PIT OFFICE BOX 751 • TELEPHONE 287 81
BUTLER, PENNSYLVANIA
ZIP CODE 16001

XXXXXXXXXX

0000000000

DATE SHIPPED	OUR ORDER NO.	CUSTOMER ORDER NO.	TERMS	DATE
	C-1377		N.W. 30 DAYS NET 30% X	12/2/71

SHIPPED TO

SOLD TO
Torrington Construction Company Inc.
P. O. Box 561
Glenas Falls, New York 12901

QUANTITY	PRICE	DESCRIPTION	ACCT.	BASE EXTENSION	NET AMOUNT
		Project: FARC 69-104 - Washington County N.Y. State Dept. of Transportation			
		Fabricated Structural Steel Furnished and Erected.			
		480,993 lbs. - Final Weight Paid by State			
		481,019 lbs. - Previously Billed			
		(29 lbs.) @ .275/lb.		\$ 5.50	\$ 5.50
		CHARGE MEMO			
		FOR CREDIT ONLY			
		C-1377 Sales (\$4.52)			
		Acct. 202 Syracuse Engineering Director (.98)			

(Credit Memo CM-243)

FRIGHT AND ACCOMMODATION CHARGES ARE STRICTLY NET CASH. INTEREST CHARGED AFTER 30 DAYS. MATERIALS COVERED BY THIS INVOICE WERE PRODUCED IN CONFORMITY WITH THE FAIR LABOR STANDARDS ACT OF 1936, AS IN EFFECT AT THE TIME OF PRODUCTION.

FCRT PITT EXHIBIT "K"

29-1
213

STATE BANK
OF ALBANY
ALBANY, N. Y.

TORRINGTON CONSTRUCTION CO., INC.

27282

ALBANY, N. Y. Dec. 11, 19 70

PAY Sixty thousand and 00/100 Dollars--

\$ 60,000.00

TO THE
ORDER
OF
Fort Pitt Bridge Works
P.O. Box 751
Butler, Pennsylvania 16001

[Signature]

60213-0001: 01-10 945 3

INVOICE DATE	INVOICE NUMBER	DESCRIPTION	OUR NUMBER	AMOUNT OF INVOICE	DEDUCTIONS	NET AMOUNT
		170-10-4		60,000.00		
		XXXXXX				

27282

23-1
213

STATE BANK
OF ALBANY
ALBANY, N. Y.

BRINGTON CONSTRUCTION C, INC.

31120

ALBANY, N. Y. February 4, 1972

PAY Twenty thousand and 00/100 dollars--

7 \$20,000.00

TO THE
ORDER
OF

Fort Pitt Bridge Works
P. O. Box 761
Butler, Pennsylvania 16001

J

⑆0213⑉0001⑆ 01109463⑈

FOR FILE EXHIBIT "K"

INVOICE DATE	INVOICE NUMBER	DESCRIPTION	OUR NUMBER	AMOUNT OF INVOICE	DEDUCTIONS	NET AMOUNT
12/8/70	205	20,000.00 On Account.				

FORT PITT EXHIBIT "K"

29-1
213

32827

STATE BANK OF ALBANY ALBANY, N. Y.

ALBANY, N. Y.

ALBANY, N. Y. September 7, 1972

PAY Twenty-eight thousand nine hundred eighty-three and 92/100 dollars--

\$28,983.92

TO THE ORDER OF Fort Pitt Bridge Works P. O. Box 751 Butler, Pa. 16001

James J. J.

⑆0213⑈0001⑆ 01⑈10 945 3⑈

INVOICE DATE	INVOICE NUMBER	DESCRIPTION	OUR NUMBER	AMOUNT OF INVOICE	DEDUCTIONS	NET AMOUNT
	50	28,983.92	F-11			

Fort Pitt Exhibit "N".

November 13, 1970

Aetna Casualty & Surety Company
111 Pearl Street
Hartford, Connecticut 06103

Attention: Bonding Claims

Re: State of New York
Contract No. FARC 69-104
Torrington Construction

Gentlemen:

We refer to that certain labor and material payment bond dated September 9, 1969 in the amount of \$2,751,962.70 wherein your company is surety and Torrington Construction Company, Incorporated is principal, conditioned upon the prompt payment of persons furnishing labor or materials on the subject contract.

Under date of October 28, 1969, our Fort Pitt Bridge Division entered into a written contract with Torrington Construction Company to furnish and erect the structural steel, Item 29, on this job. The work has been completed and Torrington has been invoiced for the total price of \$131,176.10; enclosed are copies of the invoices. Torrington has received payment on Item 29 from the state of New York, less 5% retention, but has failed, neglected and refused to make payment to Fort Pitt Bridge.

Fort Pitt Exhibit "N".

Demand is hereby made on your company, as surety, for payment of the sum of \$131,176.10. If payment is not received within ten (10) days, it will be necessary to institute suit.

Yours very truly,

SPANG INDUSTRIES INC.

By William T. Marsh
General Counsel

WTM/bd

Enclosures

cc: Torrington Construction Company
Syracuse Rigging Company
New York Department of Transportation

